

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

77-2050

US Court of Appeals
Second Circuit

Docket 77-2050
Civil Right-1-87

Appeal from District Court of Connecticut

APPELLANT BRIEF

Roy F. Carroll
642 Courtland Ave
Bridgeport Conn.
Pro-Se 665

B
ds

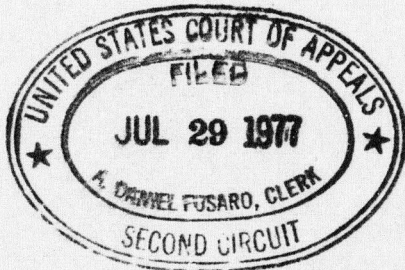


TABLE OF CONTENTS

Section One....	Table of Cases
Section Two ...	Statement of Issues
Section Three..	Statement of Case
Section Four ..	Demotion letter Breakdown
Section Five ..	Argument
Section Six ...	Appendices
	a. Demotion Letter
	b. Appeals Decision
	c. Letter of Postponement
	d. Letter of Claims Commission

Section 1

TABLE OF CASES

Abuse of Authority	Conn. Civil Service Regulation Section 14-6.1213	Page 2
Abuse of Descretion	Conn. Civil Service Regulation Section 14-6.1212	Page 2
Accusation	151 A 2d, 127 129	Page 8
Admin. Action	Abbott v Gardner 387 US 136, 87 S.Ct 1507 (1967)	Page 3
Against Weight	122 F 2d, 350, 352-53... 6 F 128 & 129	Pages 2 & 9
American Procedure Act	Section 8(b)	Page 3
Appeal Board	Conn. General Statute Sec 5-202	Page 5
Best Evidence	McCormick, Evidence 229 2nd Ed (1972)	Page 9
Bill of Particulars	155 S.E. 2d, 802, 810... F.R.D. 191, 192	Page 24
Bill of Review	114 N.E. 592, 593	Page 3
Compliance	Conn. General Statute Sec 5-268	Page 5
Disjunctive Allegations	419 2d 569, 574... 41 A 2d, 270-71	Page 2
Dismissal test	Cruz v Beto 405 US 319 (1972) Haines v Kerner 404 US 519 (72) Conley v Gibson 355 US 41, 45-46 page 2	
Due Care	198 S.E. 2d 526, 529	
Evidence	Bracy v Herringa 466 F 2d, 702 7th Cir (1972)	Page 4
Fair Hearing	212 F 275	Page 2
Finding of Fact	5 U.S.C.A. 557	Page 3
Hearsay	Uniform Rule of Evidence 63	page 2
Incompetent	116 So. 2d 566, 567	Page 10

TABLE OF CASES (Cont'd)

Penalties	Conn. General Statute Sec 5-268 Page 5
Procedural Process	237 US 309 Page 2
Rating Notice	Conn. General Statute Sec 5-225 Page 5
Service Ratings	Conn. General Statute Sec 5-237 Pages 9,10

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ROY E. CARROLL
Petitioner-Appellant

V

JOHN R MANSON, individually and in his
official capacity as Commissioner, Conn-
ecticut Department of Corrections, et al.,
Respondents- Appellees

)
)
) Docket No. 77-2050

) Appellant Brief
)

II. STATEMENT OF ISSUES: The Appellant makes the following claims:

1. Abuse of Authority: The issuance of the demotion letter, first it stated the charges, then it immediately put into effect the punitive punishment. No trial, no defense prior to imposition of demotion. The accuser became Judge, Jury and executioner.
2. Abuse of discretion: Both the Administrator and the State Appeals Board were remiss in allowing Section 14-6.1312 to be the statutory authority for demotion. Since the Administrator took it upon himself to impose the penalty of demotion, the Board should have heard the case under under Section 14-6.1212, the status the Appellant appeared before the Board in. What else can a demotion be viewed as if not disciplinary ? The Appellant counsel objected to the use of Section 14-6.1312, the objection was never ruled on.

3. Denial of Due Process (Notice): The State had ample time to prepare it's case, from the demotion letter it is evident that they took pains to list every possible charge they could find. The Appellant objects to the introduction of extraneous charges, information and testimony allowed to be presented at the hearing, that was outside the original scope of notice. This again was objected to by the Appellant counsel, and again ignored. The State was allowed to present a " Panorama" of extraneous charges in an effort to support their case. The State Appeals Board failed to observe the following:
- a. Procedural Due Process, 237-US 309
 - b. Substantive Due Process, 80 Harv L, Rev 1463 (1967)
 - c. Due Care, 198 S.E.2d, 526, 529 : Failure to exercise, 153 S.E. 2d, 356, 359
 - d. Best Evidence Rule, McCormick: Evidence 229, 2nd Ed (1972)
 - e. Against the Weight of Evidence, 122 F 2d, 350, 352-53 & 6 F 128, 129-30
 - f. Burden of Proof: 251, Supp 474, 476 (Preparation of Evidence)
 - g. Hearsay Evidence, Uniform Rule of Evidence 63
 - h. Disjunctive Allegations, 419 P 2d, 569, 574 & 41 A 2d, 270-1
 - i. Fair Hearing, 212 F 275

4. Although the Appellant was only charged with inefficiency, the State prosecutor and the Hearing Chairman continually referred to the Appellant as "Incompetent" & "Derelict in his duty, again over repeated objections by counsel.
5. Denial of Due Process: The Appeals Board refused to grant a Bill of Review on evidence of fraud, 114 N.E. 592,593. The Board also failed to specify how the charges were supported in their memorandum of decision. Previous court findings have invalidated decisions on the grounds of "Void for Vagueness", a doctrine subsumed under the due process clause, where the standards for illegal action is defined broadly and the sanctions are severe. Section 8(b) of the American Procedure Act (APA) requires that every adjudicatory decision must be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record " 5 U.S.C.A. #557 (c). Presumption that Administrative action is reviewable is supported clearly in *Abbott Labs v. Gardner*, 387 U.S. 136, 87 S.Ct 1507 (1967). The Appellant wishes the court to exercise its authority under 5 U.S.C.A #706 to settle legal issues and application of agency terms and interpretations. Appellant also cites that Mr Robert Whitehead, Chief of Employee Relations and State prosecutor in the hearing acted in Ultra Vires when he interpreted legal issues for the Board.

6. The Appellant took exception to the manner Judge Newman approached the case. Relying on the Judge's reputation as a fair jurist, the Appellant went along with the way the case was first dismissed without prejudice, with the option to refile. The case was concluded with a summary judgement. In both cases the dismissal & the summary judgement, the Judge failed to apply the Supreme Court test used to determine whether a dismissal was in order. The Appellant made clear and definite charges that the reports filed by the State were fraudulent, this should have been denied by the State, it was ignored. Under F.R.C 8(d) any allegation in a complaint not denied, is taken as the truth, therefore the case should have been heard in trial. The test cases are Cruz V Beto 405 U.S. 319 (1972), Haines /Kerner 404, U.S. 519 (1972) and Conley v. Gibson 335 U.S. 41, 45-46 (1957) Also any copies of reports used by the Appellees can not be considered as evidence by Judge Newman under Bracey v. Herring 466 F 2d, 702 (7th Cir 1972). " a summary judgement is authorized only when it is clear what the truth is, and there are no issues of fact remaining for trial. The purpose of having summary judgements is not to cut people off from trial where there is a genuine issue to be decided. Judge Newman allowed eight (8) motions for postponement, denying the Appellant motions for production, interrogatories and an affidavit of purpose, the denial was due to delay. Material requested was taken from the demotion letter, it was an action for clarification of charges.

7. The appellant took exception to the interpretation by both the State prosecutor and the Hearing Chairman on the term "Charge". They fail to recognize both allegations and accusations are legally termed "Charges". 151 A 2d,127-29.
8. Mr Whitehead, Chief of Employee Relations gave an improper reference to "service rating" during the hearing. He misled the Board on their importance.
9. Denial of equal protection under the law: Section 5-267 Conn. General Statutes require all state employees to comply with the provisions of the State Personnel Act. The Appellant attempted to get that law enforced under the provisions of Section 5-268. The States Attorney refused to investigate my complaint and refused to issue an arrest warrant for me. Section 5-202 (d) dealing with copies of hearing transcripts, I requested copies of the tape in lieu of a written transcript, the matter was presented to the Attorney General's office, he saw no reason why it was not possible. It took the Appellant over two (2) years to finally get a copy, the matter had to be resolved with the intervention of the Freedom of Information Commission, who ordered the tapes to be reproduced. The Appellant was demoted on December 14,1973, he took an examination for Captain January 1974, he was denied "Notice of rating on examinations " Section 5-225 Conn. G.S.

III. STATEMENT OF CASE: This case is a classic example of suppression of employee rights, a citizens protection under the law. The Appellant has been intimidated, coerced harassed and framed with fraudulent reports in an effort to force him into resigning his job. Each attempt brought additional abuses of authority culminating with the final act of demotion. The Appellant was demoted by letter and reassigned back onto the shift he had previously supervised for over two (2) years, this last degradation was suppose to do the trick, it failed. In order to protect "City Hall" others were forced to adopt a hands off policy, it wouldn't do to have a Commissioner, two (2) Deputy Commissioners, three (3) Wardens and various other bureaucrats caught trying to run a man out of his job by abuse of authority. The matter was taken to the State Appeals Board, where all employees and "the Governor believes a fair and impartial hearing will take place". The Board is suppose to be above reproach, it's decisions are accepted as if they were made by the Supreme Court. The Board is an extention of the City Hall clique, The prosecutor for the state is it's Chief of Employee relations who also happens to be a Deputy Commissioner in the State Personnel Department, the charging agency is relieved of the task of presenting the case. In fact in the Appellants trial statistics show that the Hearing Chairman asked more questions and interrupted more testimony and even went so far as to reply for the witness at a greater frequency than the prosecution.

The Boards operational procedures are under the direction of Mr Robert Whitehead, he schedules the hearing, his secretary produces all the correspondence for the Appeals Board. In my four (4) years of dealing with the Appeals Board, I don't recall getting anything signed personally by the Chairman. All attempts to get a review within the state functions have been denied, or the Appellant was told to take the case to court. That action was taken and the Appellant received a dismissal and a summary judgement, he has yet to be heard, the Appellant refuses to accept the appearance before the State Kangaroo Court (Appeals Board) as being heard. The chairman of that prestigious group seeing that the case was lost, attempted to bribe the Appellant. The appellant was offered his rank back in another institution under one of the Wardens who perjured himself at the hearing. The offer was presented as "one more time, he was being given one more chance". The offer was refused by the Appellant, and naturally he lost the decision. Question: How did the Appellant lose ? Was it for the preponderance of evidence ? or was it for refusing to accept a deal ? If there was enough evidence to support the decision rendered, why was the offer made ?

Claim # 1..Abuse of authority in that there wasn't previous notice given of the extraneous charges presented before the board that were outside the scope of the demotion letter. It denied opportunity for defense. Warden Karney ignored a request asking if he was going to be involved and what he had to say if so.

Claim # 2.. The Board failed to render a decision on the proper authority, be it Section 14-6.1213 or Section 14-6.1212. They also failed to define whether the appearance of the Appellant before that Board was in a disciplinary status.

Claim# 3.. Appellees use of Section 14-6.1213 is the main claim for their defense. They state it only has to give reason to support the claim. They also claim they made no charges, they only stated causes. It is a sad thing when a mans whole life depends on the semantics of a word being bantered around by another who prior to that meeting didn't know the individual. Does vindictiveness go along with bureaucratic prominence ? An accusation is defined as a charge 151 A 2d, 127, 129. The word charge is also stated in Section 14-6.1212 an authority that requires proof, not reason to safeguard the employee.

Claim#4... Procedural due process was violated by the Appeals Board by failing to properly identify the correct regulation and allowing evidence to be introduced that was outside the scope of the original charges in the letter of demotion. The Appellant was denied the chance for defense, not knowing what new charges were being introduced at the hearing.

Claim # 5..Substantive due process was denied when the State failed to observe it's own laws. Previous cited Statute violations support this claim

Claim # 6.. Due Care 153 S.E. 2d,356, 359. "Failure to exercise due care is the failure to perform some specific duty required by law"..The information set forth in the demotion letter should have been investigated by the Attorney general's office prior to getting involved. Their first duty is to the people of the State, not to act as private counsel . Since That body has agreed to defend, then to avoid a conflict of interest, the case should be heard by a Federal court.

Claim #7.. Best Evidence Rule, McCormick Evidence 229, was not observed by the Board in making it's decision. The state failed to establish it's case under that rule. This will be fully illustrated in the text dealing with the demotion letter beyond this point.

Claim# 8.. Against the Weight of Evidence, 122 F 2d,350,352-53 6 F 128,129-30. The final decision should have been based on this. Mr White head's reading of the following text should have ended the case there and then. From the hearing tapes: Whitehead: There is nothing on his record to indicate any unsatisfied or fair service ratings in any way, shape or manner". Regulation 5-237-1 (a-2)(b-d) was not followed.

Claim # 10..Disjunctive allegations, 419 P 2d,568,574 and 41 A 2d, 270, 271. The letter of demotion and the memorandum of decision rendered by the Appeals Board are two (2) clear examples of this claim. The prime drawback faced by the Appellant in trying to set up a defense was the lack of clarity in the charges made. Appellant interrogatories were made from the letter of demotion in an effort to get a clearer definition of what was being charged. Judge Newman failed to act on the motions.

Claim# 11.. Incompetency, 116 So. 2d,566,567 ..This reference was applied continually throughout the hearing by both the State prosecutor and the Hearing Chairman, even after the objection of Appellant counsel, the Appellant was not charged with that in the matter before the Board. Appellant met all the qualifications required for the rank of LT, his service record also indicates he was in good standing even after being demoted, the record is still clear.

IV. DEMOTION LETTER: The Appellant will show in this section where the state failed to establish the charges made. The testimony here is taken from the original hearing tapes which is available for the court at it's pleasure.

IV. DEMOTION LETTER: The crux of the State's case, the Appellant offers the following statements in rebuttal:

Section "A": Drafted by Mr Raymond Coyle

1. Charge: " This action is based on your performance over an extended period of time".

Reply: The agency failed to produce "service ratings" that are required by Section 5-237 G.S. of Conn. and Regulation 5-237-1. This omission spanned six (6) years, two (2) of them prior to the demotion.

2. Charge: Discussions relative to deficiencies were held both at the local level with members of the Commissioner's immediate staff ".

Reply: Sagarin: As a result of working in the laundry, did you write to Commissioner Manson ?

Carroll: Yes I did

Sagarin: Was that the reason for the meeting about which Mr Coyle testified he was present in March 1973 ?

Carroll: I believe it is

Sagarin: In fact it was at your request the meeting be held ?

Carroll: Yes sir.

Testimony is from page 18, hearing transcript, citing Carroll's testimony.

3. Charge: "Unable to gain respect and co-operation of those persons with whom you are required to work"

Reply: Seventeen (17) witnesses were called in the hearing, the State failed to show where one of those witnesses would back up the charge.

4. Charge: "You cannot follow through on assignments "

Reply: Sagarin: When LT Carroll was in the record room did he initiate a procedure pursuant to which the record photograph were attached to the record cards, is that so ?

Moore: At my direction he did, yes

Sagarin: That procedure is still in effect is it not ?

Moore: It was

Page 23 & 24 Moore's testimony on transcript.

*** Sagarin: Did LT Carroll establish a new procedure in the laundry ?

Moore: Well certainly, there was no procedure.

Sagarin: Was it in operation when you left ?

Moore: Yes

Page 31, Moore's testimony on transcript.

*** Sagarin: Did he institute the changes you talked about, were those his ideas, are they still in effect ?

Maher: Right

Page 4, Maher's testimony on transcript

Section "B": Drafted by Warden Moore.

1. Charge: "There was difficulty with counts, time computations, documents and record procedures "

Reply: Castellon: Can you be more specific about any problems that you are aware of that arose in the records section during that time ?

Moore: I can't specifically recall

*** Hearing Chairman: "You'll have to be specific, your talking about LT Carroll, you'll have to direct yourself to Mr Carroll, all right ?

Moore: I can't specifically mention cases or specific instances

*** Hearing Chairman: "And there were at least two (2) other Correctiona employees that had something to do with records, what did the others have to do with records?

Moore: Everybody works with the records, all three (3) work on the records on a regular basis during shift "

*** Castellon: Did you have a problem during this period with time computations ?

Moore: I can not specifically say that LT Carroll was responsible for the incorrect time computations at that particular time.

Pages 2,3,4,5 & 22, Moore's tesimony on transcript.

*** Sagarin : And in the next sentence do you not say "
Well the problems were not directly attributable to
LT Carroll, since several other people were working
with the same material " .?

Moore: Correct.

2.Charge: "You unnecessarily doubled the inmate work force without
authorization."

Reply: Whitehead: Do you recall LT Carroll while he was on
that assignment with you doubling the work force ?
Maher: The Wing officer was in charge of that wing and
he could hire whoever he wanted.

*** Sagarin: And then it was stated you unnecessarily
doubled the inmate work force without authorization,
can you respond to that ?

Carroll: It has been a policy of the 4-12 shift and the
day shift, that the shift Captain approve a man before
he can be put to work. His record is checked out in the
front office to find out if he has a hold on him and
anything that might stop him..escape risk,etc

Sagarin: And this was done in all instances where you
you had an inmate assigned to work for you ?

Carroll: It was

Sagarin: So that would be your supervisors authority
on which

Carroll: My shift Captain.

Testimony from Carroll's transcript page 16.

3. Charge: "Brought in a coffee-machine from outside and installed it without authorization".

Reply: Sagarin: While you were working in the Admitting & Processing room did you cause a coffee making machine to be brought in without authorization ?

Carroll: I brought a coffee machine in which I had drawn from the Engineering department.

*** Whitehead: Do you recall the LT bringing in a coffee making machine?

Maher: Yes I do sir

Whitehead: Was this authorized or not, as far as you know ?

Maher: I would have no way of knowing, it was not brought in from the outside, it was brought in from within the institution.

*** Sagarin: To your knowledge Officer Maher, was it not a fact that to get a coffee machine, one had to requisition it from the Engineering department ?

Maher: I don't know how you do it, but I know this coffee machine was a coffee machine in the center, Mr Sutton's, who at the time was the Engineer, he had this machine downstairs. Wherever you had a job, you had a coffee pot for the guys, the work details had coffee in these different sections. LT Carroll got this coffee maker for the men in the AP.P room.

Pages 14 & 15 Maher testimony of transcript

4.Charge: "You did make several suggestions which were approved but failed to follow through, others had to complete the projects ".

Reply: This charge was not covered in the hearing, Appellant can cite seven (7) instances to dispute that charge, In the interest of reducing the reading material, the Appellant stands ready to furnish proof on request.

5.Charge: "At your request you were granted permission to dispose of old clothing, etc "

Reply: Appellant charges this claim to be fraudulent as was established at the hearing, the total amount of clothing was established by the Commissioner of Claims office those results are included as attachments.

*** Sagarin: Do you know if in fact any claims were made to the State for lost clothing from the Bridgeport Correctional Center ?

Moore: When I left the Bpt Correctional Center, I had a stack of pending claims approximately that thick.... I don't know in terms of numbers or names what was finally submitted, I don't know how many were processed.

**** Sagarin: Do you in fact know what the items that were missing were ?

Moore: No I don't recall that

Sagarin: Did you make any simultaneous report of that lost clothing ?

Moore: No I did not

Pages 27 & 28 Moore's testimony on transcript.

*** Sagarin: You don't know what percentage the claim lost clothing reflects as to the total amount of clothing handled ?

Moore: Is your question I don't know what percentage of clothing disposed of, was actually clothing belonging to inmates still there ?

Sagarin: Yes

Moore: No I don't

Sagarin: Thus you are not able to say that it was a substantial proportion ?

Moore: No I'm not

*** Sagarin: Did you once you received this November 21 Letter attempt to check with any department of the State to determine if any claims had been filed ?

Carroll: Yes I did

Sagarin: Who did you check with ?

Carroll: I checked with the Commissioner of Claims office.

Sagarin: What did you find ?

Carroll: I found the that the claim that large amounts of clothing was false

Sagarin: How did you find it was false ?

Carroll: I found this did not substantiate the claim they made in the November 21, 1973 letter.

Section "C": Drafted by Warden Santos

1. Charge: "Your last assignment in Bridgeport was to establish a laundry system etc ..."

Reply: The Appellant is hard pressed to find testimony by Warden Santos that related to the statement "high Degree of coordination"..Warden Santos testified to evrything but what he charged.

*** Sagarin: I think your testimony was that once a month or twice a month there migh have been some problems with laundry deliveries from Somers, correct ?

Santos: Yes sir

Sagarin: And those deliveries, you testified occurred because either a truck broke down or there was some bad weather ?

Santos: Those could be two (2) reason

Sagarin: We've already established the responsibilities for the trucks rested in Somers, is that correct ?

Santos: to repair the trucks

*** ** Sagarin: Is it not a fact that in all instances as far as the operation at the Bridgeport Jail was concerned LT Carroll's crew was always ready to pick-up or deliver the laundry ?

Santos: Yes as far as I was informed, they were ready.

*** Sagarin: Is it not a fact since May of 1973 until the time you've had the new laundry facilities, there were also truck breakdown that occurred ?

Santos: Yes

Sagarin: Sometimes the laundry was late ?

Santos: That's right

Sagarin: Sometimes it was delivered ?

Santos: That's true

Sagarin: And that was all after LT Carroll.

*** Sagarin: Is it not a fact that in some instances LT Carroll went to extraordinary lengths to insure that the laundry was done. Such as having the laundry done at the local laundromat ?

Santos: that's true, on my instructions, yes

*** Did he allow the extra items to those inmates who were going on furlough ? (Whitehead)

Santos: this is correct.

Sagarin: Did you personally see LT Carroll extend these extra privileges ?

Santos: No it was reported

*** Sagarin: Warden Santos as between Somers & Bridgeport which organization had the trucks for delivery ?

Santos: Somers

Sagarin: Was there to your knowledge, was there a person at Somers responsible for the trucks ?

Santos: That is correct

Sagarin: That person was somebody other than LT Carroll ?

2.Charge: " Allowing an inmate to urinate on the floor of the laundry"

Reply: This is a completely fraudulent charge,Santos's statement is as follows : Whe the inmate came before the disciplinary board, he stated that when he asked LT Carroll where the toilet was, he said "We don't have any". An inmate standing by answered the other inmates question, his answer was,the inmate anser was, "We urinate in the corner of the laundry area" and the inmate stated that since LT Carroll did not object to it, he went ahead, did the same thing, the result of which was observed and he was written up on a disciplinary report.

*** Whitehead: Did you observe at one time, one of your inmates using the drain

Migliore: One of my men working for me, I caught him using the drain.

Whitehead: And you put him on report ?

Migliore: He was releieved of his duties immediately.

*** Sagarin: Did you ever observe your crew ordinarily urinating in the drain which is marked in front of the laundry room?

Migliore: My crew, you mean men working directly for me,outside the laundry, one man, one time.

Sagarin: That man was put on report ?

Migliore: Yes sir, I put him on report

*** Sagarin: Did the crew which you supervised, which was LT Carroll's crew, as a matter of course urinate in that drain?

Migliore: Of course not.

There has been on file for the past year a grievance on Warden Santos citing the urination incident. To date the case has not been heard, administration is burying the grievance to protect Santos and in turn protect themselves. There is a copy of that grievance attached.

As a point of interest, Warden Santos was relieved of his position as Warden and reduced back to his former rank of LT.

Section "D": Drafted by Warden Karney

1. Charge: "To compound the problem you sent another inmate in to retrieve the handcuffs"

Reply: This statement is a lie, a vindictive lie. Warden Karney's total exposure to the Appellant is less forty (40) days.

*** Sagarin: Do you have any written report which indicates LT Carroll sent another inmate into O'Toole's cell to pick-up the handcuffs?

Karney: No I haven't

*** Karney: I also have a report that indicates that the handcuffs, the mace and the individual were left in the cell with the custody of one (1) officer to be responsible for the whole particular area.

*** Sagarin: You don't know how that inmate got those cuffs ?

Karney: No I don't (Page 20& 21 Karney 1st cross-exam)

*** Castellon: Did that leave anyone in the cellblock area ?

Karney: It left no officer in the cellblock area, where normally there was two (2). And it was a summer help that was on duty. (Page 7, Karney 1st cross-exam)

2. Charge: "You were informed by the Captain that a choral group was coming in to participate in Protestant services "

Reply: Castellon: As you recall, what the Captain told you, did he indicate that he made it clear to LT Carroll that this was to be a religious service and not for the general population ?

Karney: Yes. (Page 11, Karney 1st cross-exam)

*** Sagarin: When you had the Londonaires come back the 2nd time and you invited the whole population, did you find there had been a favorable reaction to their being there the 1st time ?

Karney: Yes (Page 30, Karney 1st exam)

*** Hearing Chairman: Now the important point is Warden, we know what your instructions are, the important thing here is, chain of communication. I'll give you the benefit of the testimony that's been put forth here. LT Carroll has testified here that nothing further was given him. Captain DaDalt has been in here, he 's testified he didn't do what your suggesting. There's

no one whos testified here that's relayed your, that we've heard that relayed your instructions to LT Carroll.

*** Hearing Chairman: Number one we have already heard the testimony that the communications in this particular instance was poor, also the order that you left. It has been testified to here, that, that was it, there were no other verbal orders given by you. Now we haven't heard one (1) person in this room substantiate the fact an order was given to him, including LT Carroll. Now we're not just picking on him, there's been Captain DaDalt here, there's been officers testifying that were present that evening. He's testified that he got the information from the notes you left in the logbook. But it did say service and gospel sing, is that different than what happened on October 21st ? Karney: Here's 10/12 here, Londonaire people will be here sunday Oct 21, 6:pm to do concert for population, instructions to follow.

Hearing Chairman: Now let's go back to what you put down on the 1st (July).

Karney: The Londonaires will be here for protestant services and gospel sing, at 6:pm on July 1.

Hearing Chairman: There are no further instructions ?

Karney: No

Hearing Chairman: You testified that you did give some to at least Captain DaDalt, now he's testified he didn't get them ?

*** Hearing Chairman: Were there any problems ?

Karney: Considering it a fact that he was an inexperienced as far as our policies down there, I wouldn't have him responsible for running an activity like this.

Hearing Chairman: But he was on as charge officer, prior to this, on a sunday ?

Karney: Yeah

Hearing Chairman: Without any specific instructions, did you leave him in charge of the shift ?

Karney: Well there's instructions as far as church services.

Hearing Chairman: Were they carried out ?

Karney: Yes

Hearing Chairman: Did you have to give him any further instructions about anything ?

Karney: No

Hearing Chairman: So we get to July 1st and your notation is in the logbook and a verbal discussion with at least Captain DaDalt ?

Karney: Right

Hearing Chairman: Which he doesn't confirm..

*** Sagarin: Did you say that you left instructions that after the Londonaires were there on Oct 21, there would be no other activities ?

Karney: Yes

Sagarin: Does that mean TV attendance ?

Karney : Yes

Sagarin: Does the logbook reflect at 7:pm while the Londonaires were still there on Oct 21, that there were ten (10) at the TV attendance ?

Karney: No response

Sagarin: And that was during the time you were there ?

Karney: Ah hm, that's right

These are a few of the inconsistencies that permeate Warden Karney's report and testimony.

3. Charge: " Before maximum security inmates are permitted out for recreation, etc ."

Reply: Hearing Chairman: Where were the inmates at the time ?

Karney: "There was inmates in the dayroom and there was inmates in the corridor, the dayroom door was unlocked."

Hearing Chairman: the dayroom door was unlocked ?

Karney: "The dayroom door was unlocked " and I observed at least four (4) inmates in the immediate corridor leading out into the yard.

Hearing Chairman: Where were the maximum security inmates ?

Lewis: They were in the dayroom except two (2).

Hearing Chairman: The ones in the dayroom were locked ?

Lewis: Yes they were locked in the dayroom, yes

Hearing Chairman: There is no question in your mind that they were locked ?

Lewis: Absolutely no question about it in my mind.

*** Sagarin: Is it your testimony, just to be clear, is it your testimony that both doors were open ?

Karney: Yes

Sagarin: How did you observe it was unlocked ?

Karney: At that particular time I see an inmate come out of the dayroom.

*** Hearing Chairman: The bullpen (dayroom) was locked, there were two (2) inmates in this corridor, where ?

Lewis: Right near the door

Hearing Chairman: Where did they come from these two (2) inmates ?

Lewis: They are tier workers

Hearing Chairman: How did they get to the corridor, did they come out of the dayroom ?

Lewis: No they didn't

Hearing Chairman: Your sure about that ?

Lewis: Positive about that

Hearing Chairman: How did they get into the corridor ?

Lewis: They didn't even go into the dayroom because they are our cleanup men, doing tier work.

Hearing Chairman: They are out doing work ?

Lewis: Out doing work, just waiting for recreation.

*** Hearing Chairman: Your recollection is different than Off.

Lewis's, he testified the two (2) inmates were in there doing work, which is the normal course of business.

Hearing Chairman: The dayroom door was locked, that's what he's testified to, he said he was there.

Karney: All right, he was there and if...I couldn't.... I honestly couldn't say it was definitely unlocked....

The charge "Breach of Security" would occur if the men had been let out into the yard prior to the vehicle being in place. At no time were there any inmates out of the dayroom prior to the security required was in place. Nothing happened to warrant the charge, there were no incidents of any manner.

4. Charge. "At recreation, an inmate hit by a bat ,etc ".

Reply: Castellon: Let's get on to another incident, this I guess we refer to as the softball incident where an inmate was hit with a ball.

Karney: "The ball hit him in the face "...We have written instructions and I have a copy of this. That instances that require hospitalization or requires any injury out there..the detail is to be secured, all inmates returned to the institution, an evaluation be made and whatever medical procedure necessary be taken.

Castellon: I'd like to introduce them into evidence.

Sagarin: I object to this at this time.

Hearing Chairman: On what basis ?

Sagarin: On the basis it's not a complete order, (b) there's no signature on the order (c) if there's an original

*** Sagarin: Are you a correctional officer ?

Iozzia: Yes sir

Sagarin: Where were you assigned before Montville ?

Iozzia: Brooklyn Correctional Center, as a Medic.

Sagarin: As a medic ?

Iozzia: Yes sir.

Sagarin: Do you recall an incident in which an inmate
was playing baseball and injured his eye ?

Iozzia: Yes sir

Castellon: Did he ask you to look at the cut ?

Iozzia : I just looked at it

Castellon: Did he ask you to ?

Iozzia: Yes

Sagarin: Did you discuss the seriousness of the injury
with LT Carroll ?

Iozzia: No

Sagarin: You didn't say anything ?

Iozzia: Nothing , I said it was a big cut

Sagarin: The what happened to the inmate ?

Iozzia: He was sent to the hospital

Sagarin: Do you, having been a former medical officer
agree that was the proper thing to do ?

Iozzia: At the time yes

The Appellant has observed other inmates leaving the recreation
area while other remained out there. This happened each time an
inmate claim he had to use the toilet facilities, they didn't
bring in 20-30 men just so one inmate can use the facility.

V. ARGUMENT: The Appelle's own testimony has shown there has been an abuse of authority, trust and descretion. The case was allowed to build into a federal issue, when it should have been resolved at the State level by the Appeals Board. Here we have the classic problem of bureaucratic administrators who get themselves in a bind trying to muscle an employee out of his job. If the employee fights for his rights, then he is a trouble-maker, who is he to question the almighty..How dare he ask questions, or for that matter leave if he doesn't like the unfair conditions.

This Appellant has spent thirty (30) years building his career work habits, until this incident, he has enjoyed an excellent recrd, substantiated by written evaluations. Speaking of evaluations, the agency citing inefficiency, has failed to evaluate the Appellant for six (6) years. State statute calls for a yearly evaluation, the demotion action was instituted two (2) years after no evaluations, where is the supporting evidence of the alleged inefficiency ?

It was bad enough to be charged with an alleged inefficiency, But the prosecutor and the Hearing Chairman both continually referred to the Appellant as Incompetent and "Derelict in his Duty" as well. This matter can only be resolved by a trial, which is what the Appellant has fought for over the last four (4) years. I've had enough of the Kangaroo Courts I want justice in a court of law.

MONTESQUIEU in his "Spirit of Laws" (1748) stated the Appellant's complaint. When the legislative and executive powers are united in the same person, or in the same body of magistracy, there can be liberty, because apprehensions may arise. but the same monarch or senate should enact tyrantical laws, to execute them in a tyrantical manner.

Again there is no liberty, if the powers of judging be not separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor.

Miserable, indeed, would be the case, were the same man, or the same body whether of nobles or of the people, to exercise those three powers. that of enacting laws, that of executing the public resolutions and that of judging the crimes or differences of individuals..

Webster cites " The law of the land is intended, a law which hears before it condemns "

Justice Fields cited "Galpin v Page 18 Wall.350,368,369 " The rule that no one should be personally bound until he has had his day in court, was as old as the law itself.

The Supreme Court holds that the Due Process requirement of the 14th Amendment prevents conviction based on testimony known to be perjured. Mooney v Holohan 294 US 103,(1934). Also cited as a defense "Reasonable notice or Vagueness " In Re Oliver 333, US 257,(1948) Supra Supreme Court.

The Appellant also complains that the State Appeals Board memorandum of decision is a violation of Due Proces. It falls under the citation of "Oliver" for it's vagueness. The decision as it stand fa'ls to allow the Appellant to opportunity of defense. Th... no clear cut findings on the original charges. It also fai... outline whether or not the "panoramic effect" allowed by the Appeal Chairman had any effect on the decision.

It has been established here that such information proved to be fraudulent. Finding that to be true, the creditability of those allowed to testify on reason alone should be discarded. To use reason alone to substantiate charges that deprived a man of a livelihood, should be carefully checked for such creditability to give the victim a fair chance. The discrepancies displayed in the Appelles testimony and exhibits negates their claim to any creditability. The case must now stand on it's merits of evidence and proven facts.



STATE OF CONNECTICUT
DEPARTMENT OF CORRECTION
340 CAPITOL AVE. HARTFORD, CONNECTICUT 06106



THOMAS J. MESKILL
GOVERNOR

November 21, 1973

JOHN R. MANSON
COMMISSIONER

Lt. Roy E. Carroll
639 Courtland Avenue
Bridgeport, Connecticut 06605

Dear Lt. Carroll:

This is to notify you that you are being demoted from Correctional Lieutenant to Correction Officer for inefficiency under Section 14-6.112 of the regulations. The effective date of your demotion is December 14, 1973. You are to report to Warden Santos at the Community Correctional Center-Bridgeport for reassignment on December 14, 1973 at 8:00 A.M.

This action is taken based on your performance over an extended period of time, in a variety of assignments. In each instance, the Warden concerned felt that your performance was not that expected of a Lieutenant. In order to allow whatever opportunity existed to redirect and correct your performance, the Correctional Center Administrator went along with recommended assignment changes. You were allowed, also, to receive an annual increment in July, although ample grounds existed for rendering an unsatisfactory service rating.

It is also noted that during this period, discussions relative to deficiencies were held both at the local level and with members of the Commissioner's immediate staff. Your unwillingness or inability to accept these attempts at constructive criticism indicates that any further such actions would be futile.

Each failure, coupled with your complete inability to recognize any personal failings or change your methods of operation, have made it impossible to place you in any supervisory position in the department.

It is the opinion of the several Wardens to whom you have been assigned that you are clearly lacking in good judgement, are incapable of evaluating situations and directing appropriate actions; that you cannot follow through on assignments and are unable to gain the respect and cooperation of those persons with whom you are required to work.

Following are examples of your inefficiencies:

During the three month period you were assigned as the Record Supervisor at CCC-Bridgeport, there was difficulty with counts, time computations, document and record procedures. You were unable to supervise and coordinate the activities of others assigned to work in these areas. Your poor attitude relative to these problems forced reassignment.

NOV 28 9 40 AM
RECEIVED
OFFICE OF THE
COMMISSIONER
DEPARTMENT OF
CORRECTIONS

Lt. Roy E. Carroll

November 21, 1973

You were then assigned to the Admittance and Processing Room. You were charged with coordinating the operation of the West Wing where the A & P room is located and re-organizing and simplifying the booking process. Logistics for the West Wing which had not been a problem, became one in a fairly short period of time. You unnecessarily doubled the inmate work force without authorization, brought in a coffee-making machine from outside and installed it; again without authorization. Further, you came to the defense of the inmates in conflicts with other shifts over matters of which you had no first hand knowledge. You did make several suggestions which were approved but failed to follow through and others had to complete the projects.

At your request, you were granted permission to dispose of old clothing belonging to inmates discharged a long time before. In the process, you disposed of large quantities of clothing belonging to inmates still in custody. This resulted in a large number of lost property claims and a considerable expense to the State.

Your last assignment at Bridgeport was to establish a laundry exchange system with the Correctional Institution-Somers. Your responsibility required a high degree of coordination with the least amount of conflict. This was a level you never reached. Causes of your failure are cited as poor coordination with the Somers Institution, poor supervision of the inmates working in the laundry, breaches of security regulations and conflict with other staff members.

Your request to be assigned to a Shift Supervisor position was honored to give you another opportunity. Montville was selected to give you the benefit of working in a new environment and also the opportunity to work in a smaller center.

At Montville, after a three week orientation, you were assigned as the Second Shift Commander. Things began to fall apart necessitating transfer to the first shift to work under a Captain.

Examples of inefficiencies at Montville follow:

Your attempt to handcuff a violent inmate through the bar door of his cell. The inmate pulled in his arms and gained possession of the handcuffs, a potentially dangerous weapon. The institution's medic had to be called to administer a sedative. To compound the problem, you sent another inmate into the cell to retrieve the handcuffs.

You were informed by the Captain that a choral group was coming in to participate in the regular Protestant religious service. This service is ordinarily restricted to the Protestant population. You took it upon yourself to consider this choral group as entertainment and proceeded to permit the entire population to attend, even though there was insufficient security and control for a group this large.

Lt. Roy E. Carroll

November 21, 1973

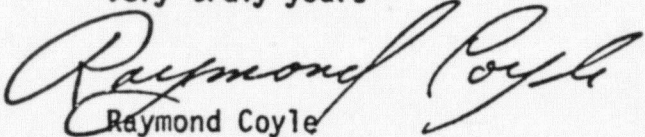
Before maximum security inmates are permitted out for recreation, a radio equipped vehicle and an officer with a walkie-talkie and a shotgun are placed in the yard. This vehicle is visible from inside the building and the officer in charge is required to insure that it is in place before the door is unlocked and inmates permitted to enter the yard. You unlocked the door, went out to inspect the yard while the door was left unlocked and the vehicle was not in place.

At recreation, an inmate, when hit by a bat, received a cut over his eye, requiring medical attention. Although instructions on what to do are plainly spelled out in writing, you had to seek direction from a Correction Officer rather than provide the supervision expected of a supervising officer.

We feel that every opportunity has been given to you. We have not recommended dismissal because we feel that you had been an effective Correction Officer and could be again.

You are notified that you have the right of appeal to the Personnel Appeal Board within ten days of the effective date of demotion.

Very truly yours


Raymond Coyle
Correction Centers Administrator

RC:gp



STATE OF CONNECTICUT

PERSONNEL APPEAL BOARD

STATE OFFICE BUILDING - HARTFORD, CONNECTICUT
06115

TELEPHONE
(203) 566-5253

Herbert G. Appleton
William H. Baum
Royal E. Cowles
Louis Margolis

Myron R. Bernstein
Chairman

Rev. Robert D. McGrath
Paul J. Pomerantz
William J. Sullivan
Alexander F. Zarnow

DECISION ON APPEAL

The Personnel Appeal Board held hearings on June 11, 1974, June 14, 1974 and June 25, 1974 on the appeal of Roy Carroll, Department of Correction, from his demotion.

The Board finds the following facts not disputed:

- 1) Roy Carroll was first employed on August 9, 1968, as a Jail Guard. He was appointed Sargeant on July 25, 1969, and on August 21, 1970, was appointed Lieutenant.
- 2) He served in these capacities in the Bridgeport Correctional Center the majority of the time in service.
- 3) As a Lieutenant at Bridgeport, he was assigned at least three different specific areas of responsibility at different times.
- 4) He was subsequently transferred to the Montville Correctional Center as a Lieutenant.
- 5) He was demoted effective December 14, 1973, to the rank of Correction Officer and returned to Bridgeport. He was notified of this demotion by letter dated November 21, 1973, and signed by Raymond Coyle, Correction Centers Administrator.
- 6) This demotion was effected under Civil Service Regulation 14-6.112 which provides that an appointing authority may demote an employee with permanent status to a position of a lower grade for incompetency or inefficiency. The demotion letter only mentioned inefficiency.
- 7) The demotion letter listed eight 'examples' of alleged inefficiencies at both Bridgeport and Montville, in addition to containing six other paragraphs relating to the situation.
- 8) He was notified of his right of appeal and proceeded with the appeal in a timely manner.

After hearing extensive testimony from a large number of witnesses, and after reviewing voluminous exhibits, the Board further finds as follows:

- 1) Mr. Carroll was demoted for inefficiency, and not for disciplinary purposes.

RECEIVED

SEP 18 1974

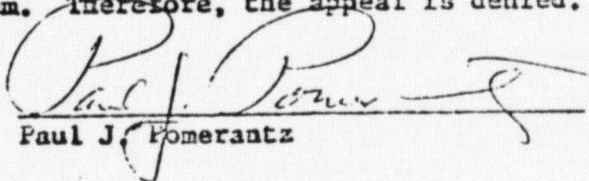
J. DANIEL SAGARIN

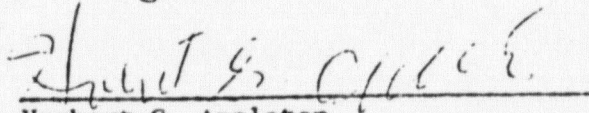
Roy Carroll
Department of Correction
(Continued)

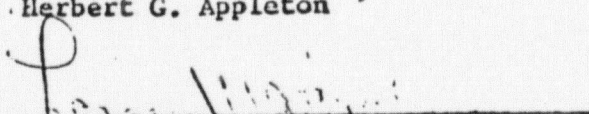
-2-

- 2) Because Mr. Carroll was demoted for inefficiency, the appointing authority must "give reasons to support his actions. This requirement is substantially different than would be required for a demotion for disciplinary reasons.
- 3) Mr. Carroll was notified that he was demoted for inefficiency and reasons stated in support of this in the demotion letter which is part of the record.
- 4) while not every single reason listed in the letter of demotion was supported in toto by the testimony and exhibits, most of the reasons were supported by the testimony and exhibits in varying degrees.
- 5) These reasons covered time spent in two jails under three different wardens and, therefore, the Board rejects any claim of prejudice.
- 6) Other situations which were not specifically stated in the demotion letter involving Mr. Carroll were brought up in the course of the hearing. Mr. Carroll's counsel objected to their consideration, and this objection was overruled because the listed reasons were referred to as "examples." The Board felt it was entirely proper to hear other examples which occurred during the period in question but not specifically enumerated in the letter. The Board emphasizes that if this were a disciplinary action, it would not have permitted this leeway, but would have restricted the exhibits and testimony to the acts specifically enumerated in writing.

Based on the above, and considering the fact that the position of Lieutenant is a command position having critical duties and a high level of responsibility, the Board finds that the action of the appointing authority in demoting Mr. Carroll to Correction Officer was neither arbitrary nor unreasonable and was done for the best interest of the correctional system. Therefore, the appeal is denied.


Paul J. Pomerantz


Herbert G. Appleton


Louis Margolis

DATE ISSUED

9-14-58

Roy E. Carroll
639 Courtland Ave
Bridgeport Conn, 06605

January 20, 1974

Mr Myron Bernstein, Chairman
State Personnel Appeal Board
P.O. Box 806
Hartford Conn, 06115

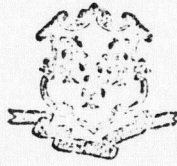
Dear Mr Bernstein:

I would like to request a temporary postponment of my demtition hearing scheduled for January 30th.

Your notice of the hearing dated January 16th was received by me on the 18th. The minimum date allowed to file a witness list is the 20th of January (Sunday). That is insufficent time to get my case together.

To date I have not been able to get the information as to who and what charges have been filed, I have had to apply to the courts for a subpoena to obtain it.

Very truly yours
Roy E. Carroll
Roy E. Carroll



State of Connecticut

COMMISSIONERS
RICHARD A. WALLACE, CHAIRMAN
BARUYR PESHMALYAN
ERNEST J. MILLERICK

COMMISSION ON CLAIMS
1179 MAIN STREET, HARTFORD, CONNECTICUT 06103

JOHN E. FAY
EXECUTIVE SECRETARY
WILHELMINA DATE
SPECIAL ASSISTANT

April 3, 1974

Mr. Roy Carroll
639 Courtland Avenue
Bridgeport, Connecticut 06605

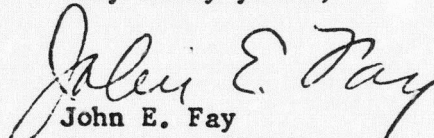
Dear Mr. Carroll:

This is the information you requested on April 2, 1974 with reference to number of adjudicated claims involving the Bridgeport Correctional Center for the years 1971, 1972, and 1973.

The following is from our records:

<u>1971</u>	<u>1972</u>	<u>1973</u>
None	3	1

Very truly yours,


John E. Fay
Executive Secretary

JEF;d

